

IN THE SUPREME COURT OF MISSOURI

SUPREME COURT No. SC87265

IN THE INTEREST OF B.T.

DALE GODFREY, JUVENILE OFFICER OF JACKSON COUNTY

RESPONDENT

v.

T.E. (FATHER)

APPELLANT

---

**APPELLANT'S REPLY BRIEF**

---

MILLER LAW FIRM, P.C.

Jenifer W. Svancara            MO #51842  
Danne W. Webb                MO #39384  
4310 Madison Avenue  
Kansas City, Missouri 64111  
jsvancara@mlfkc.com  
Telephone: (816) 531-0755  
Facsimile: (816) 561-6361

COURT APPOINTED ATTORNEY  
FOR APPELLANT

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	1
CONCLUSION .....	4
CERTIFICATE OF COMPLIANCE .....	5

## ARGUMENT

### I. THE ISSUE ON APPEAL IS NOT MOOT BECAUSE THE STATUTE THAT WAS IN EFFECT AND APPLIED TO FATHER IN THE PRESENT ACTION WAS UNCONSTITUTIONAL.

Respondent makes the untenable argument that because RSMo. § 210.117 has been modified by the Missouri Legislature through an emergency clause signed by the Governor making it immediately effective (the 2005 statute) that this appeal is somehow moot. Father concedes that it inadvertently cited to the 2005 statute in its brief, however when discussing and arguing the statute, Father was referring to the 2004 statute. Moreover, the 2004 statute, which Respondent admits was in effect and applicable to Father at the time that the Family Court issued its judgment, is unconstitutional. Simply because the legislature has amended the statute does not make this appeal moot.

Respondent argues that the 2005 statute no longer contains certain enumerated Missouri statutes that would be applicable to Father, therefore, Respondent argues that in its current form, RSMo. § 210.117 would no longer be a basis for Father being precluded from ever regaining custody of daughter. *See Respondent's Brief*, p. 19. Respondent, however, misses the point. The fact remains that the 2004 statute was applied to Father, and based upon the 2004 statute, the Court ruled that Father is precluded from ever regaining custody of his daughter. For the reasons set forth in Father's Appellate brief, the 2004 statute is unconstitutional. The only recourse available to this court is to overturn the judgment of the Family Court.

II. ALLOWING FATHER TO MAKE ARGUMENTS TO THE TRIAL COURT DURING THE ADJUDICATION PHASE DOES NOT OVERCOME THE FACT THAT RSMo. § 210.117 CREATES AN IRREBUTTABLE PRESUMPTION.

Respondent next argues that because father made arguments on the underlying cause which brought daughter into the custody of the State, the statute did not create an irrebuttable presumption. Father admits that during the underlying cause he was permitted to make arguments to the court. That is a matter of record. Father further admits that RSMo. § 210.117 (2004) does not come into play until after daughter is taken into the custody of the state. That is dictated by the statute. Father, however, vehemently disagrees with Respondent's argument that RSMo. § 210.117 provides a means for rebutting the presumption that he is an unfit father.

Respondent's argument appears to put the cart before the horse. In essence, Respondent argues that because Father was permitted to make arguments during the adjudicatory hearing, Father was allowed to rebut the presumption he was unfit to raise his daughter. Respondent points out for this Court, however, that RSMo. § 210.117 never even comes into play until after the adjudicatory hearing. Its importance only comes into play during the disposition hearing. At that point, findings on the underlying action have already been made. Clearly, Father cannot be able to argue against the application and constitutionality of a statute before it applies to him.

Under the 2004 statute, once daughter was taken into the custody of the state, it didn't matter what the Father presented to this Court. All that Respondent needed to do was present evidence of Father's 14-year old conviction, and the statute precluded Father

from ever regaining custody of his daughter. Even if the Court wanted to reunite Father with daughter, which the social worker testified was the planned goal, the Court could not do so under the 2004 statute. The 2004 statute presumed that merely because Father was convicted of a crime fourteen years ago, Father was an unfit parent. This creates an irrebuttable presumption.

### **CONCLUSION**

Respondent has failed to provide this Court with any valid argument for finding RSMo. § 210.117 (2004) constitutional. Rather, Respondent points out that the statute has been amended and it is, therefore, now constitutional. While Father commends the legislature for amending the statute, the statute that was applied to Father was unconstitutional.

WHEREFORE, for the reasons set forth in Father's appellate brief and for the foregoing reasons, Father respectfully requests that this Court find that Missouri Statute § 210.117 (2004) is unconstitutional and should, therefore, be overturned.

Respectfully submitted,

MILLER LAW FIRM, P.C.

---

Jenifer W. Svancara      MO #51842  
Danne W. Webb      MO #39384  
4310 Madison Avenue  
Kansas City, MO 64111  
Telephone: 816-531-0755  
Telefax: 816-561-6361  
**COURT APPOINTED ATTORNEYS  
FOR FATHER**

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above was sent via U. S. Mail this 16th day of December, 2005, to:

Office of Guardian ad Litem  
Scott Forrester  
GUARDIAN AD LITEM FOR JUVENILE  
625 E. 26<sup>th</sup>  
KCMO 64108

Natalie Buckley  
MBCH CHILDREN AND FAMILY MINISTRIES  
4001 NE Lakewood Way  
Lee's Summit, Missouri 64064

Jennifer Cicero  
ATTORNEY FOR JUVENILE OFFICER  
625 E. 26<sup>th</sup>  
KCMO 64108

Diane Watkins  
ATTORNEY FOR MOTHER YOLANDA THOMAS  
Wagstaff & Cartmell, LLP  
4740 Grand, Ste. 300  
KCMO 64112

---

Attorney for Father

### **CERTIFICATE OF COMPLIANCE**

I certify that the above and foregoing Brief of Appellant complies with the limitations contained in Rule 84.06 (b)(1) of the Missouri Rules of Civil Procedure, in that the Brief of Appellant has 749 words and the diskette has been scanned for viruses and is virus free.

---

Attorney for Father